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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL REVIEW 25 OF 2015

BETWEEN

**KHAN IMAN
DAVIE PONDERANI**

**AND
THE REPUBLIC**

CORAM

HONOURABLE JUSTICE M. TEMBO

Mr Katuya, Applicant

Mr Ng'omba, Applicant

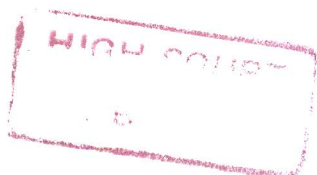
Mr Kalua, Respondent

M Kakhobwe, Official Interpreter

ORDER

This court read the papers filed by the parties. The central question is whether the lower court had power to do what it did? Section 247 of Criminal Procedure and Evidence code provides for what should happen if the Prosecution is unable or unwilling to proceed with the case against the accused. The Court can either adjourn or otherwise will discharge the accused. Those are the two options.

The lower court is bound by the Criminal Procedure and Evidence Code and it had no statutory power to do what it did. If the accused really wanted to challenge the evidence of the State herein in relation to the right to a fair trial of the accused persons then the procedure was not to force a closure of the States' case.



So, on this review this Court finds the lower court's Order irregular and reverse the same to allow the State call its last two remaining witness. If anything the lower court must proceed under Section 247 of Criminal Procedure and Evidence Code.

Made in Court at Blantyre this 18th day of May, 2016



JUSTICE M.A TEMBO
JUDGE